



# PUBLIC NOTICE

**Federal Communications Commission**  
**445 12<sup>th</sup> St., S.W.**  
**Washington, D.C. 20554**

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**DA 15-300**  
**Released: March 9, 2015**

**CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON  
PETITION FOR EXPEDITED DECLARATORY RULING FILED BY  
MAMMOTH MOUNTAIN SKI AREA, LLC**

**CG Docket No. 02-278**

**Comment Date: April 6, 2015**

**Reply Comment Date: April 21, 2015**

With this Public Notice, we seek comment on a petition for expedited declaratory ruling filed on February 23, 2015 by Mammoth Mountain Ski Area, LLC (Mammoth)<sup>1</sup> seeking clarification that the Commission's revised Telephone Consumer Protection Act (TCPA)<sup>2</sup> rules that became effective October 16, 2013,<sup>3</sup> do not "invalidate prior contractual consents" received before that date.<sup>4</sup> In the alternative, Mammoth seeks clarification that these rules are inconsistent with Congressional intent.<sup>5</sup> These revised rules require prior express written consent that meets specified standards for certain autodialed or prerecorded telemarketing calls.<sup>6</sup>

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<sup>1</sup> See *Petition for Expedited Declaratory Ruling or Forbearance*, CG Docket No. 02-278, filed by Mammoth Mountain Ski Area, LLC on February 23, 2015 (*Petition*). According to its petition, Mammoth "is a ski resort located near Mammoth Lakes, California." *Petition* at 1. Mammoth does not ask the Commission to exercise its forbearance authority in Section 160(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 160(c).

<sup>2</sup> The TCPA is codified as 47 U.S.C. § 227. The Commission's implementing rules are codified as 47 C.F.R. § 64.1200. In relevant part, the TCPA prohibits any person within the United States from making "any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or artificial or prerecorded voice . . . to any telephone number assigned to a . . . cellular telephone service . . . or any service for which the called party is charged for the call." 47 U.S.C. § 227(b)(1).

<sup>3</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 27 FCC Rcd 1830 (2012) (*2012 TCPA Order*).

<sup>4</sup> *Petition* at 6, 13.

<sup>5</sup> *Id.*

<sup>6</sup> See 47 C.F.R. § 64.1200; *2012 TCPA Order*, 27 FCC Rcd at 1837 para. 18 (revising the Commission's rules to require prior express written consent for all autodialed or prerecorded telemarketing calls to wireless numbers and residential lines, and maintaining flexibility in the form of consent needed for purely informational calls).

According to Mammoth, its customers purchase Mammoth products online and, at the time of purchase, the customer can voluntarily provide contact information, including a phone number.<sup>7</sup> Mammoth notes that it uses this information to notify its customers about updates, discounts, and related products.<sup>8</sup> Mammoth contends that its customers' use of its website subjects its customers to Mammoth's privacy policy, whereby the customer agrees to be contacted by Mammoth.<sup>9</sup> Mammoth argues, however, that its contractual rights to call these customers are retroactively impaired by the *2012 TCPA Order*<sup>10</sup> and that the written consent requirements adopted in that order are contrary to the intent of Congress.<sup>11</sup> We seek comment on this and any other issues raised in the *Petition*.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>12</sup> Persons making *ex parte* presentations must file a

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<sup>7</sup> *Petition* at 2.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 5-10.

<sup>11</sup> *Id.* at 10-13.

<sup>12</sup> 47 C.F.R. §§ 1.1200 *et seq.*

copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

**FOR FURTHER INFORMATION CONTACT:** Josh Zeldis, Consumer and Governmental Affairs Bureau, Federal Communications Commission, (202) 418-0715 or [Josh.Zeldis@fcc.gov](mailto:Josh.Zeldis@fcc.gov).

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